No. 80-1119

In the Supreme Court of the United States

OCTOBER TERM, 1980

LAWRENCE DAVID RAMAPURAM, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the warrantless search for dynamite in the unlocked trunk of a car left in an open field violated the Fourth Amendment.

2. Whether alleged defects in the certifications required under 18 U.S.C. 5032 deprived the district court of jurisdiction to try petitioner as an adult.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-50) is reported at 632 F. 2d 1149. An earlier opinion of the court of appeals on the jurisdictional question (Pet. App. 69-72) is not reported, but is noted in a table at 577 F. 2d 738. The opinion of the district court denying the motion to suppress (Pet. App. 51-68) is not reported. An earlier opinion of the district court denying the motion to dismiss for lack of jurisdiction (Pet. App. 73-84) is reported at 432 F. Supp. 140.

JURISDICTION

The judgment of the court of appeals was entered on October 9, 1980 (Pet. App. 85). A petition for rehearing was denied on November 7, 1980 (Pet. App. 86). The petition for a writ of certiorari was filed on January 5, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the District of Maryland, petitioner was convicted on one count of concealing stolen dynamite, in violation of 18 U.S.C. 842(h). He was sentenced to ten years' imprisonment, to be served consecutively to a ten-year sentence previously imposed under a state conviction. The court of appeals affirmed (Pet. App. 1-50).

1. The evidence adduced at trial and at a suppression hearing is detailed in the opinions of the court of appeals (Pet. App. 3-9) and the district court (*id.* at 52-55). In December 1975, petitioner, who was 17 years old at the time, and a younger friend named Fisher broke into a concrete cemetery bunker and removed approximately 100 sticks of dynamite. They loaded the dynamite into a car and drove to a farm owned by petitioner's father and stepmother. There, they placed the dynamite in the unlocked trunk of an old car that was sitting in a field on the farm (Pet. App. 5-6).

On December 31, 1975, a federal agent who had been investigating the theft of the dynamite received a report that petitioner and Fisher had taken the dynamite and that petitioner had threatened to blow up some public buildings with it. Later that day, when the agent learned that the state police had Fisher in custody, he went to interview him. Fisher admitted his participation in the theft and told the agent where the dynamite was. After unsuccessfully attempting to locate petitioner and his father, the agent went to the farm along with two state policemen. When they arrived, it was dark and raining heavily. The car was found parked in an open area near a fenced paddock at a distance of 150 to 200 feet from the public road. The car appeared to have been abandoned: the license plates had expired, the doors were unlocked, and the trunk lock was missing. The agent opened the trunk of the car and found the stolen dynamite. The agent then removed the explosives and turned them over to military officers who disposed of them (Pet. App. 53-55).

Petitioner's father testified that, although he had title to the car from which the dynamite was removed, it had been held primarily for use by petitioner. The farm was owned jointly by petitioner's father and his former wife. The only people who lived on the farm were tenants who had rented the farmhouse, but petitioner and his father both had access to the farm and used it on occasion (Pet. App. 55).

2. In January 1976, petitioner was charged by a criminal information with an act of juvenile delinquency in concealing the stolen dynamite, pursuant to 18 U.S.C. 5031. In February 1976, the government moved to transfer petitioner for criminal prosecution as an adult pursuant to 18 U.S.C. 5032. Subsequently, the government entered into a deferred prosecution agreement with petitioner. When the government learned that petitioner had failed to abide by the conditions of this agreement, it reinstated its motion to

transfer.[1] At the transfer hearing, petitioner moved to dismiss the delinquency proceedings for lack of jurisdiction. He contended that the Section 5032 certification was invalid because it certified that the state *prosecutor*, rather than the state *court*, had refused to assume jurisdiction over petitioner. The district court granted the government's motion to transfer subject to its ruling on the motion to dismiss. In replying to petitioner's motion, the government submitted a supplemental certification supported by a statement of refusal to assume jurisdiction from the appropriate state court (see Pet. App. 70-71).

The district court denied petitioner's motion to dismiss, ruling that the original certification satisfied the requirements of 18 U.S.C. 5032 and that, in any event, the second certification was timely (Pet. App. 73-84). The court of appeals affirmed on the ground that the second certification was timely (Pet. App. 69-72). This Court denied certiorari. 439 U.S. 926 (1978). While the appeal of this dismissal was pending, petitioner was indicted and charged as an adult, resulting in the conviction of which he now seeks review. In the adult proceedings, petitioner renewed his contention that the court lacked jurisdiction because the certifications were defective. This contention was rejected by both the district court and the court of appeals (Pet. App. 31).

3. Prior to trial, petitioner filed a motion to suppress the evidence seized in the search of the trunk on Fourth Amendment grounds. The district court denied this motion on the ground that exigent circumstances justified the

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[1]The government had agreed to defer prosecution on the condition that petitioner break no more laws. In March 1977 petitioner was arrested by state authorities and charged with armed robbery of a gasoline station and several other unrelated breaking and entering offenses, to which he later confessed. See Memorandum for the United States in Opposition, *Ramapuram* v. *United States* (No. 77-1818, 1978 Term), at 2-3.

search (Pet. App. 59-67). The court of appeals affirmed, although it expressly declined to decide whether the search was justified by exigent circumstances (Pet. App. 12-14). Rather, the court concluded that petitioner had no reasonable expectation of privacy in the unlocked trunk of the car left in an open field (Pet. App. 14-29). Judge Ervin dissented (*id.* at 32-50).

ARGUMENT

1. Petitioner contends (Pet. 16-27) that the search of the trunk of the junked car violated his Fourth Amendment rights. This contention is without merit.

a. The court below correctly concluded that petitioner had no reasonable expectation of privacy in the unlocked trunk of this inoperable car that he had left in an open field. Clearly, the fact that the car was located on property owned by petitioner's father does not mean that petitioner's reasonable expectation of privacy was violated. It has long been recognized that the Fourth Amendment does not proscribe warrantless probable cause entries into an open field, even if the field is private property. *Hester* v. *United States*, 265 U.S. 57, 59 (1924). And this rule has recently been reaffirmed by this Court. *Air Pollution Variance Board* v. *Western Alfalfa Corp.*, 416 U.S. 861, 865 (1974).[2] Moreover, many people had rightful access to the private property involved here (see Pet. App. 26), and, indeed, the farm was inhabited not by petitioner or his family but by tenants. Thus, the privacy interest in this field was significantly less than that in *Hester*.

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[2]Petitioner asserts (Pet. 24-26) an intra-circuit conflict with *United States* v. *Bradshaw*, 490 F. 2d 1097 (4th Cir.), cert. denied, 419 U.S. 895 (1974), but that case is readily distinguishable. In *Bradshaw*, officers searched an operable truck parked next to a farmhouse in which the defendant resided. Therefore, the search took place in the "curtilage" of the house, an area that has always been considered to implicate a stronger privacy interest than an "open field." See, *e.g.*, *United States* v. *Williams*, 581 F. 2d 451, 453 (5th Cir. 1978).

Given the authority to enter the open field, the probable cause that concededly existed was also a sufficient basis for the search of the unlocked trunk of the abandoned car. First, as the court of appeals noted (Pet. App. 25), it is well recognized that a diminished expectation of privacy ordinarily attends an automobile. See *South Dakota* v. *Opperman*, 428 U.S. 364, 367-368 (1976). Thus, even locked areas of a car may sometimes be searched on less than probable cause. *South Dakota* v. *Opperman*, *supra*; *Cady* v. *Dombrowski*, 413 U.S. 433, 446-448 (1973); *United States* v. *Dall*, 608 F. 2d 910 (1st Cir. 1979), cert. denied, 445 U.S. 918 (1980). The fact that the car here was a "junker" surely does not increase petitioner's expectation of privacy in it.

Moreover, by leaving the dynamite in an unlocked area, petitioner failed to take the "precautions customarily taken by those seeking privacy." *Rakas* v. *Illinois*, 439 U.S. 128, 152 (1978) (Powell, J., concurring). The dynamite was no more secure than if petitioner had left it in the field covered by a blanket. This Court has recognized that the failure to take such precautions indicates the absence of a legitimate expectation of privacy. See *Rawlings* v. *Kentucky*, No. 79-5146 (June 25, 1980), slip op. 6. Because many people regularly passed through the field, petitioner had no reasonable expectation that the trunk would be free from examination by others. See Pet. App. 26-27; *United States* v. *Vicknair*, 610 F. 2d 372 (5th Cir. 1980). Accordingly, the examination of the trunk by the agent, based upon probable cause, did not violate petitioner's Fourth Amendment rights.

b. In any event, even if petitioner had a reasonable expectation of privacy in the trunk, the search was justified because of "exigent circumstances," as the district court held. The agent's uncontradicted testimony was that the

dynamite was inherently unstable and subject to spontaneous explosion. He was aware of the age of the dynamite in question, and, in his view, the improperly stored dynamite posed "a grave threat to the public" (Pet. App. 64-65).[3] The danger thus posed was clearly an "exigent circumstance" that permitted a warrantless search. See 2 W. LaFave, *Search and Seizure* § 6.5(d) (1978); *United States* v. *McKinney*, 477 F. 2d 1184, 1186 (D.C. Cir. 1973); *United States* v. *Johnson*, 467 F. 2d 630 (2d Cir. 1972), cert. denied, 413 U.S. 920 (1973); *United States* v. *Melville*, 309 F. Supp. 829 (S.D.N.Y. 1970); see also *United States* v. *Chadwick*, 433 U.S. 1, 15 n.9 (1977); *Cady* v. *Dombrowski*, *supra*, 413 U.S. at 447. Moreover, the agent had information that petitioner, whose whereabouts he did not know, had threatened to blow up public buildings with this dynamite. Although this latter danger could have been obviated if the agent had left a policeman to guard the dynamite while he attempted to obtain a warrant, it might well have been difficult to secure a warrant on New Year's Eve; the agent was not required to take this course of action. See *United States* v. *Johnson*, *supra*, 467 F. 2d at 639.

2. Petitioner also contends (Pet. 27-35) that the certifications filed by the United States Attorney, pursuant to 18 U.S.C. 5032, were either invalid or untimely and thus that the district court lacked jurisdiction to try him. This contention is insubstantial.

The first certification, supported by a letter from the state prosecutor stating his refusal to assume jurisdiction, sufficiently showed an abdication of jurisdiction by the state court to comply with 18 U.S.C. 5032. Under Maryland law,

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[3]When he reached the farm, the agent was aware that the car that he had been told contained the dynamite was close to a major road and at least one house. Since it was dark and the agent was unfamiliar with the area, he did not know if there were other houses in the immediate vicinity (Pet. App. 66).

final discretion to prosecute a juvenile is vested exclusively in the State's Attorney. As a practical matter, therefore, the state court could not assume jurisdiction over the offense in question once the State's Attorney declined to prosecute. See *Murphy* v. *Yates*, 276 Md. 475, 494-495, 348 A.2d 837, 847-848 (1975); *In re Anderson*, 20 Md. App. 31, 48-49, 315 A.2d 540, 549-550, aff'd, 272 Md. 85, 321 A.2d 516, appeal dismissed, 419 U.S. 809 (1974), cert. denied, 421 U.S. 1000 (1975). The congressional purpose underlying the certification requirement—to defer to the states in juvenile delinquency matters—is adequately served by providing the state with the first opportunity to assert jurisdiction. See *United States* v. *Cuomo*, 525 F. 2d 1285, 1290 (5th Cir. 1976). The first certification demonstrates that the state was afforded this opportunity here.

Even if the first certification was faulty, the second certification, supported by a letter from the state court, was timely filed. In *United States* v. *Cuomo, supra*, the court held that a certification filed prior to indictment and arraignment was timely, noting that it was not "deciding the latest possible time for filing" such a certificate. 525 F. 2d at 1290.[4] Moreover, petitioner points to no prejudice that he suffered as a result of the alleged tardiness of the certification. The certification was filed prior to the court's order on the transfer motion and thus it was clearly sufficient to supply district court jurisdiction for proceedings on the indictment.

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[4]Petitioner seeks to distinguish *Cuomo* on the ground that "proceedings" were had here in the district court prior to the filing of the second certification. These proceedings consisted of the court's approval of the deferred prosecution agreement, which curtailed petitioner's freedom, and the government's filing of a motion to transfer. The juvenile in *Cuomo*, of course, also suffered a significant "curtailment" of his freedom prior to the certification; he was jailed for two six-day periods based on arrest warrants issued by a United States magistrate. In any event, the *Cuomo* court expressly adopted as correct the government's view that "the certification need be filed only prior to arraignment in the district court." 525 F. 2d at 1289.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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